

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
SEP 21 2 58 PM '95, D.C. 20554

DISPATCHED BY  
MM Docket No. 93-205

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Donalsonville, Georgia) RM-8270

## MEMORANDUM OPINION AND ORDER

Adopted: September 8, 1995; Released: September 19, 1995

By the Chief, Policy and Rules Division:

1. On December 8, 1993, the Allocations Branch issued a *Report and Order* allotting Channel 271A to Donalsonville, Georgia.<sup>1</sup> Jerry E. White and Donald F. White, d/b/a Seminole-Decatur Radio Company had originally requested, and the Commission had issued an NPRM proposing, the allotment of a different channel, Channel 298A, to Donalsonville as that community's second local FM service.<sup>2</sup> Clyde and Connie Scot, d/b/a EME Communications, filed an opposition to proposal based on, among other things, its belief that the allotment would adversely affect the allotment of Channel 299C3 at Sasser, GA. It asserted that if the proposal were adopted, it would cause a 92% reduction in the area to locate a transmitter site for Channel 299C3 at Sasser, and argues that no land owner within the reduced area was willing to lease or sell land for a transmitter site for Channel 299C3. The *Report and Order* noted that both Seminole and EME acknowledged that land may not be available within the usable area of Channel 299C3 for towers to accommodate both the Donalsonville and Sasser allotments. It also found that the allotment of Channel 298A to Donalsonville would be short-spaced to an application for Channel 299C3 at Sasser. In order to resolve the technical conflict, the *Report and Order* decided to allot Channel 271A as an alternate channel to Donalsonville.

2. Two parties filed petitions for reconsideration of the *Report and Order*. The original proponents of Channel 298A at Donalsonville, Jerry E. White and Donald F. White, Sr., urged the Commission to reverse the *Report and Order* and allot Channel 298A to Donalsonville. They sub-

mitted that the entire usable area of Channel 271A falls within land either owned or farmed by Pearce Farms and that the owners indicated that they would not lease or sell the land for the use of a radio station tower. Further, the Whites contended that on September 16, 1993, Marshall W. Rowland, Sr., filed an application for Channel 299C3 at Sasser with a site clear of the proposed Donalsonville assignment of Channel 298A.<sup>3</sup>

3. Sasser applicant Marshall W. Rowland, the other petitioner, similarly urged the Commission to reverse the *Report and Order*. Rowland argued that contrary to EME's contention in response to the *Notice*, at least one suitable transmitter site location would have been available for Channel 299C3 at Sasser if Channel 298A had been allotted to Donalsonville.<sup>4</sup> Further, Rowland noted that another applicant for Sasser was Albany Radio, Inc., and that one of the principals of Albany Radio, Clyde Scott, was also a principal of EME, the original opponent of the Donalsonville allocation, upon whose assertions the decision to allot an alternate channel were based.<sup>5</sup> Rowland questioned Albany Radio's motives and asserted that Albany Radio's Sasser application was short-spaced to the original Donalsonville proposal and would therefore have been rejected as insufficient for tender absent the substitution of Channel 271A at Donalsonville.<sup>6</sup>

4. Rowland contended that while the allotment of Channel 298A to Donalsonville would allow for an available transmitter site at Sasser, allotment of Channel 271A to Donalsonville did not. It asserted that within the very small area to locate a fully-spaced transmitter site for Channel 271A, none of the land is available because Pearce Farms, which either owns or leases all of the land, was not willing to lease the land for the use of a radio tower.<sup>7</sup> Further, Rowland submitted that he did not previously participate in this proceeding because he did not discover until after the initial comment period had expired that the competing Sasser applicant had proposed a transmitter site that was shortspaced to the original Donalsonville Channel 298A proposal.<sup>8</sup>

5. Albany Radio, Inc. filed an Opposition to both petitions. It submitted a technical exhibit showing a transmitter site for Channel 271A and including a letter from the landowner agreeing to enter into lease negotiations to make his land and existing tower site available. It contended that because the reference coordinates for Channel 271A were not "unsuitable" (e.g., offshore, in a national or state park or at an airport), the channel was properly allotted.<sup>9</sup> Albany Radio's technical exhibit also included a map showing the "clear area" that would have been available to locate a transmitter site for Channel 299C3 at Sasser had Channel 298A been allotted to Donalsonville as proposed. Albany Radio argued that there would be no site available for Sasser if such an allotment was made because existing landowners in the clear area were not willing to sell or lease land. It submitted that Rowland's proposed Sasser

<sup>1</sup> *Report and Order* in MM Docket No. 93-205, 8 FCC Rcd 8506 (1993).

<sup>2</sup> *Notice of Proposed Rule Making* in MM Docket No. 93-205, 8 FCC Rcd 4851 (1993).

<sup>3</sup> White Petition at 1-2.

<sup>4</sup> Rowland Petition at 2-3.

<sup>5</sup> *Id.* at 3 n.3, 7-8. In its Opposition, Albany Radio noted that Mr. Scott is no longer one of its principals. Albany Radio Opposition at 1 n.1.

<sup>6</sup> *Id.* at 3 n.3. Rowland also contended that the Albany Radio

application proposed to move the transmitter site closer to the population center at Albany, GA, than would otherwise be permitted. *Id.*

<sup>7</sup> *Id.* at 5-7.

<sup>8</sup> *Id.* at 7-8. Rowland also filed a separate "motion for stay" of the *Report and Order* pending action on his reconsideration petition. Because no application has been filed for Channel 271A at Donalsonville, it was not necessary for the Commission to act on Rowland's motion.

<sup>9</sup> Albany Radio Opposition at 3-4.

transmitter site was outside of the reduced clear area by a few tenths of a kilometer and that it met the spacing requirements to Channel 298A at Donalsonville merely by the Commission's policy of metric rounding. Albany Radio asserted that EME did not check the availability of transmitter sites beyond the reduced clear area and that accordingly, there was no basis for petitioners' attacks on EME's veracity.<sup>10</sup> Further, Albany Radio contended that Rowland had no legitimate interest in this proceeding.<sup>11</sup>

6. In reply, Rowland did not dispute that its site was slightly outside of the "clear area" for Sasser and came into play due to metric rounding, but argued that this did not mean that its site was not legitimate.<sup>12</sup> Further, Rowland contended that while Albany Radio stated that it found a site that could be used for Channel 271A, this site was short-spaced to other proposals.<sup>13</sup> Rowland also submitted that it had a legitimate interest in this proceeding because the outcome would directly affect the Sasser proceeding, in which both Rowland and Albany Radio had pending applications.<sup>14</sup>

7. Since the time the petitions were filed, Rowland has been granted a construction permit for Channel 299C3 at Sasser (WEGC-FM). Taking into consideration the coordinates specified for Rowland's Sasser construction permit, we have conducted an engineering analysis and determined that a fully-spaced site is available for Channel 298A in Donalsonville. Thus, we will reverse the *Report and Order* and substitute Channel 298A for Channel 271A at Donalsonville. We believe that the public interest would be served by the allotment of Channel 298A to Donalsonville as that community's second local FM service. Channel 298A can be allotted to Donalsonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers south, in order to avoid short spacing to Rowland's Sasser construction permit.<sup>15</sup>

8. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by Jerry E. White and Donald F. White, Sr., and by Marshall W. Rowland ARE GRANTED to the extent detailed above.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), 303(r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, that effective November 3, 1995, the FM Table of Allotments, section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below to read as follows:

City	Channel No.
Donalsonville, Georgia	292A, 298A

10. IT IS FURTHER ORDERED that the window period for filing applications for Channel 298A will open on November 3, 1995 and will close on December 4, 1995.

11. For further information concerning this proceeding, contact the Allocations Branch of the Policy and Rules Division at (202) 776-1660. Questions related to the win-

dow application filing process should be addressed to the Audio Services Division of the Mass Media Bureau at (202) 418-2700.

#### FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink  
Chief, Policy and Rules Division  
Mass Media Bureau

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> Rowland Reply at 2-3.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> The coordinates for Channel 298A at Donalsonville are North Latitude 30-59-07 and West Longitude 84-53-12.